

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MACARY BELIZAIRE,

Petitioner,

-against-

THOMAS RIDGE, Secretary of the United States
Department of Homeland Security, *et al.*,

Respondents.
-----X

GEORGE B. DANIELS, District Judge:

Petitioner filed a habeas corpus petition, pursuant to 28 U.S.C. § 2241, challenging a final order of removal from the United States. The matter was referred to Magistrate Judge Michael H. Dolinger for a Report and Recommendation (“Report”). Magistrate Judge Dolinger issued a Report recommending that the petition be transferred to the United States Court of Appeals for the Second Circuit. The magistrate judge found that the recently enacted REAL ID Act divests the district courts of jurisdiction to adjudicate challenges to final orders or removal and requires transfer to the Second Circuit, which is the appropriate circuit court in this case. Neither party has filed objections to the Report, and the time in which to do so has expired. Petitioner has specifically advised the Court that he does not contest the findings and recommendations in the Report. Petitioner does however request that, if the case is transferred, a stay of removal be issued.

The Court may accept, reject or modify, in whole or in part, the findings and recommendations set forth within the Report. Fed.R.Civ.P. 72(b); 28 U.S.C. § 636(b)(1). Where there are no objections, the Court may accept the Report provided there is no clear error on the face of the record. Nelson v. Smith, 618 F.Supp. 1186, 1189 (S.D.N.Y. 1985); see also Heisler v.


ORDER
03 CV 3686 (GBD)

Kralik, 981 F.Supp. 830, 840 (S.D.N.Y. 1997), aff'd sub nom. Heisler v. Rockland County, 164 F.3d 618 (2d Cir. 1998).

After reviewing the Report, the Court finds that the record is not facially erroneous. Accordingly, the Report and Recommendation is hereby adopted in its entirety, and for the reasons stated therein, the petition is transferred to the United States Court of Appeals for the Second Circuit. Petitioner's removal is stayed pending further order from the Court of Appeals.

Dated: New York, New York
September 6, 2005

SO ORDERED:



GEORGE B. DANIELS
United States District Judge